



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

December 19, 2003

Office of  
Enforcement and  
Compliance Assurance

**MEMORANDUM**

**DATE:** January 30, 2004

**SUBJECT:** Environmental Justice News for the Week Ending January 30, 2004

**FROM:** Nicholas Targ, Counsel  
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This summarizes environmental justice news for January 9, 2004, through the week ending January 30, 2004. Except as noted, this review is confined to Lexis/Nexis queries conducted under the following search: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/50 minorit! or low\*\*\*income) or (executive order 12898) or (civil right! w/50 environmental)". Please note that we have not included multiple articles covering the same topic.

For the week ending January 30, 2004, the following news is current:

**A. News-**

1. "Cornell Cooperative sponsors breakfast meeting Feb. 10," Star-Gazette, Elmira, New York (January 30, 2004).

Cornell Cooperative Extension of Chemung County is sponsoring an event called "Growth, Development and Chemung County" at the Holiday Inn-Riverview in Elmira on February 10, 2004. "Rod Howe, associate director of Cornell Cooperative Extension and of the Community and Rural Development Institute will talk with the audience about sustainable development, green building, smart growth and the economic benefits of developing brownfield and environmental justice," according to the article.

2. Paul T. Rosynsky, "Visionary Hayes honored by port," Alameda Times-Star, Alameda, California (January 25, 2004).

On January 24, 2004, over 100 people participated in a ceremony sponsored by the Port of Oakland to turn a new observation tower at Middle Harbor Shoreline Park into a monument celebrating the life and achievements of Chappell Hayes. "During his brief 45 years of life, Chappell Hayes inspired hundreds and changed the lives of thousands with his stoic leadership of

West Oakland's never-ending fight for environmental justice. Port officials decided to name the tower after Chappell two years ago after West Oakland residents, who helped design the new park, came up with the idea," according to the article.

**3. Vivi Abrams, "A Lesson In Environmental Justice Village Creek Group Wants Schools Help In Cleanup Of Contaminated Waterway," Birmingham News, Birmingham, Alabama (January 25, 2004).**

Village Creek Human and Environmental Justice Society sponsored a Saturday training session to educate teachers on the need for high school students to join cleanup efforts on Village Creek. "Thirteen teachers attended the seminar at the University of Alabama at Birmingham. They learned about the history of Village Creek pollution, state waterway policy and the project to build a greenway along the creek," the article reported. U.S. Representative Arthur Davis said, "He hopes this work can help correct injustices that keep some communities more polluted than others. He said he plans to hold a symposium this spring to discuss environmental justice in the area having to do with water contamination, landfills and lead, among other topics," the article reported.

**4. Linda Conner Lambeck, "King's struggle continues with quest for environmental justice," Connecticut Post, Bridgeport, Connecticut (January 19, 2004).**

On Sunday January 18, 2004, the Peabody Museum of Natural History in New Haven, Connecticut in conjunction with the state Department of Environmental Protection conducted a celebration of the legacy of Rev. Martin Luther King Jr. Vernice Miller-Travis, an environmental justice consultant, spoke Sunday at the first of a two-day festival honoring King's "Legacy of Environmental and Social Justice". Mrs. Miller Travis explained, "People need to raise their voice. This is not the time to be quiet. Connecticut is a really good state to bring that message home to, because Connecticut continues to be one of the most segregated states in the country. Inner cities are overwhelmingly populated by people of color and low-income communities. Suburbs are almost exclusively white and affluent." The article reports, "Edith Pestano, Administrator of the state DEP's environmental justice program, agrees that there is work left to do, but believes things are better now than they were 10 years ago."

**5. "All Together Now," St. Louis Post-Dispatch, St. Louis, Missouri (January 16, 2004).**

Community Groups in St. Louis are urging Mayor Slay to do more on the issues around childhood lead poisoning. The article reports, "Two groups involved in combating lead poisoning are prodding the city to do more faster. The St. Louis Lead Prevention Coalition recently issued a report showing that the city's efforts to combat and prevent lead poisoning were at a virtual standstill. Health and Environmental Justice, a grass-roots advocacy group, has conducted community forums and brought in experts to show the city how it might address the lead problem. While it praised the city's intentions, it said the overall effort is less a plan than a wish list." According to the article, "The Slay Administration has pledged to eliminate childhood lead poisoning by 2010 through accelerated screening, tougher building code enforcement and lead abatement in housing where pregnant women and children live.

**6. "South Africa; First Arrest for Dumping in E Cape," Africa News, (January 13, 2004).**

The first ever arrest for an environment crime has been made by the South Africa Department of Environmental Affairs and Tourism (DEAT). The article states, “The arrest was made against an Eastern Cape estate owner who allegedly dumped hazardous waste in his back yard. The estate owner was arrested in East London yesterday for allegedly dumping the waste, which the department said, had the potential of exposing nearby communities to serious health risks. ‘The arrest marks victory for environmental justice in South Africa,’ said DEAT spokesperson Phindile Makwakwa.”

**7. “Comments mixed on NRC draft environmental justice policy,” Inside N.R.C., (January 12, 2004).**

The article reports, “Nevada's Agency for Nuclear Projects urged NRC to withdraw a draft policy statement on environmental justice and instead "focus future efforts on strengthening rather than weakening the importance of fully incorporating environmental justice in the universe of NRC operations." Nevada's Agency for Nuclear Projects has concerns that “the policy seems to appears to be a regression to a time when environmental justice matters were not singled out for special attention, but rather were lumped together with other issues and other processes,” as reported by the article.

**B. Legislation, Regulation and Policy**

**1. H. R. 3551, “Surface Transportation Research and Development Act of 2003,” introduced by Vernon J. Ehlers (R-MI) on Nov. 20, 2003.**

Among the many other provisions of this bill, Section 507, “Surface Transportation Environment and Planning Cooperative Research Program,” provides for a “national research agenda for surface transportation,” which would focus on: human health, ecology and natural systems, and environmental and social justice.

**2. Department of Homeland Security, Temporary interim rule with request for comments, “Deepwater Ports,” 33 CFR Parts 148, 149, and 150 (Jan. 6, 2004).**

Among other provisions under, Subpart G, “Environmental Review Criteria for Deepwater Ports,” sub-section 148.707(d), environmental reviews shall examine... “The effect on human health and welfare, including socioeconomic impacts, environmental justice and protection of children from environmental health and safety risks.”

**3. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Environmental Justice Policy (Dec. 2003).**

Among other things the policy provides, “EJ will be a cornerstone in OECA’s smart enforcement program, which emphasizes the various use of data, compliance tools, and enforcement actions to address significant environmental problems... OECA will use data to identify problems in communities with EJ concerns and apply appropriate compliance tools to achieve optimal environmental outcomes.” The policy also states that issues of environmental justice will be addressed through OECA’s budget and priority-setting processes, grants, agreements with states and tribes, and through public outreach and work with the Enforcement Sub-Committee of the National Environmental Justice Advisory Council.

## C. Litigation

**1. *Communities Against Runway Expansion, Inc. v. Federal Aviation Administration*, 2004 U.S. App. LEXIS 1403 (CADDC Jan. 30, 2004).** [NT NOTES: A fuller description of the substantive issue is included, herein, at item 5); NOTE ALSO, the holding in this case is consistent with *Mid State Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003)(finding that an environmental justice analysis performed by the STB was not arbitrary].

Among other things, the Federal Circuit found that the Federal Aviation Administration's (FAA) environmental justice analysis, included in an EIS, is reviewable under the Administrative Procedure Act. The court held, "We conclude, in agreement with the FAA, that Boston's claim [regarding environmental justice] is properly before this court because it arises under NEPA and the APA, rather than the two orders cited above. The FAA exercised its discretion to include the environmental justice analysis in its NEPA evaluation, and that analysis therefore is properly subject to 'arbitrary and capricious' review under the APA." The court found that FAA's analysis was reasonable.

**2. *BFI Waste Systems of North America v. Dekalb County, Georgia*, C.A. No. 1:02-CV-922-RWS, 2004 U.S. Dist. LEXIS 1057 (ND Geo. Jan. 16, 2004).**

The District Court granted Dekalb County's motion for summary judgment, dismissing plaintiff's claims that the County impermissibly rejected the plaintiff's petition to expand a landfill. Among other things the court found that the County based its decision on appropriate factors. "The record makes clear that Defendants had a rational basis for denying the applications. They heard testimony from individuals about the potential negative impact of landfills on ground water; they considered environmental justice issues and the impact of landfills on residential areas; they referenced reports that had been completed before and after the adoption of the Subtitle D standards; and they took into consideration complaints of residents about odors. These concerns reveal that, as a matter of law, it was rational for Defendants to believe that denying the applications would serve the legitimate public purposes of protecting the health and safety of DeKalb County citizens."

**3. *Holy Cross v. Army Corps of Engineers*, C.A. No. 03-370, 2003 U.S. Dist. LEXIS 20030 (ED La. Nov. 3, 2003).**

The court denied the Army Corps of Engineers motion to dismiss "environmental and social justice" and other organizations' RCRA-based citizen suit to enjoin planned dredging of the Inner Harbor Navigational Canal, commonly known as the Industrial Canal, which connects the Mississippi River, the Gulf Intracoastal Waterway, Lake Pontchartrain, and the Mississippi River-Gulf Outlet. Among other things, the court rejected the assertion that citizen suits cannot enjoin future activities. The court found that, "the purpose of RCRA would hardly be satisfied if parties could not bring suit until damage had occurred or offensive conduct had commenced."

**4. *Lucero v. Detroit Public Schools*, Case No.: 01-CV-7292-DT (E.D. Mich. Sept. 3, 2003).**

[NT NOTES: This case is unpublished and is available on the Guild Law Center's website at <http://www.sugarlaw.org/info/BeardSchoolOpinionSept03.pdf>; NOTE ALSO, While the opinion identifies that the defendants' motion to dismiss was denied in part and granted in part,

the opinion's reasoning and holding supports the court's express conclusion that, "Viewing the Complaint in a light most favorable to the Plaintiffs, the Court also concludes that Plaintiffs have sufficiently stated a claim under Title VI Regulations via 42 U.S.C. § 1983, as well as a constitutional violation of their right to personal security and bodily integrity. Defendants, Motion to Dismiss is DENIED."

The court denied the defendants' motion to dismiss plaintiffs' action to enforce, under 42 U.S.C. § 1983, disparate impact regulations implementing Title VI, finding *Loschiavo v. City of Dearborn*, 33 F.3d 548, 552 (6<sup>th</sup> Cir. 1994), controlling in the Sixth Circuit. The court also recognized the existence of a constitutional right to "personal security and bodily integrity" under the 14<sup>th</sup> Amendment. The court found that this right would protect an individual from environmental impacts that "shock the conscience of the court." The court noted that the "Where... an official has the opportunity to deliberate over the matter, the judiciary will be 'shocked' if that 'official acts in a way that exhibits the deliberate indifference to others' rights.'" (citation and internal punctuation citation omitted).

**5. *Massachusetts Port Authority (Massport) v. City of Boston*, 17 Mass. L. Rep. 158; 2003 Mass. Super. LEXIS 425 (Nov. 18, 2003).**

Massport sought to have the court lift a longstanding injunction that prevents it from constructing an additional runway at Logan Airport. A number of potentially affected cities filed counter claims under the Massachusetts Environmental Policy Act. Among other issues decided, the court ruled that Massport's selection of a "reference community" in its environmental justice analysis was not arbitrary or capricious. Summarizing the issues, the court found that, "under Massport's preferred alternative, there are higher percentages of minority and low-income persons within the 65 dB DNL and 60 dB DNL noise contours than the overall percentages of minority and low-income persons in all of the affected communities within those noise contours averaged together. However, these overall percentages are lower than the percentages of minority and low-income persons in Boston or Suffolk County as a whole. Chelsea does not point to any regulation, directive or other source of authority to support the contention that principles of environmental justice require that each affected community be considered individually in relation to all the affected communities or to the political jurisdictions of which the affected communities are a part. The comparison Massport made (as directed by the Secretary) between the affected communities taken together and the jurisdictions of which they form a part appears to conform to the Federal environmental justice policy, and is not arbitrary or capricious. Furthermore, as Massport points out, the estimate of noise impacts imposed by the preferred alternative with the FAA's required northwest/southeast wind restriction in place suggests that the number of households in Chelsea in the 65 and 60 dB DNL noise contours will decrease as compared to the no-build alternative."